

**261—64.5(80GA, HF677) Agreement, compliance, and repayment provisions.**

**64.5(1) *Agreement.*** After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

- a.* Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;
- b.* Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;
- c.* The amount or level of tax benefits the approved business shall receive as negotiated by the department; and
- d.* The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

**64.5(2) *Annual certification.*** An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

**64.5(3) *On-site monitoring.*** The approved business shall, upon prior reasonable notice and at any time (during normal business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

**64.5(4) *Repayment of benefits.*** If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

*a. Job creation.* If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

*b. Wages and benefits.* If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

*c. Capital investment.* If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of \$1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

*d. Selling, disposing, or razing of property.* If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing

structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

**64.5(5) *Layoffs or closures.*** If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance, the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

**64.5(6) *Extensions.*** If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

*a.* The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

*b.* The project does not fit under paragraph “*a*” and the approved business has demonstrated to the department’s satisfaction the existence of special circumstances.